

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEHMAN BROTHERS HOLDINGS,
INC.,)
Plaintiff,)
v.)
LOAN NETWORK, LLC,)
Defendant.)
ORDER
CASE NO. C09-1026TSZ

THIS MATTER comes before the Court on the Motion for Summary Judgment, docket no. 33, filed by Plaintiff Lehman Brothers Holdings, Inc. (“LBHI”). Defendant Loan Network, L.L.C. (“Loan Network”) filed no opposition to the motion for summary judgment, which the Court construes as an admission that the motion has merit. See Local Rule CR 7(b)(2). Having reviewed the materials submitted by LBHI, the Court also concludes the motion has merit, and enters the following Order.

01 **I. Facts**

02 **A. The Loan Purchase Agreement**

03 On January 10, 2007, Loan Network entered into a written loan purchase
 04 agreement (the “Agreement”) with Lehman Brothers Bank (“LBB”). Mot., Ex. 1
 05 (Trumpp Decl.) at Ex. 1-A, docket no. 33. Pursuant to the Agreement, Loan Network
 06 negotiated residential mortgage loans with consumers and then sold those loans to LBB.
 07 Id. at ¶ 4.

08 The Agreement incorporated by reference the terms of the Seller’s Guide of
 09 Aurora Loan Services, L.L.C. (the “Seller’s Guide”), a subsidiary of LBB. Id. at Exs.
 10 1-A, 1-B. Pursuant to a provision of the Seller’s Guide, Loan Network warranted that
 11 none of the documents associated with any of the mortgage loans sold to LBB were
 12 falsified, fraudulent, or otherwise contained any untrue statements, or omitted any
 13 material facts. Id. at Ex. 1-B, §§ 703(1), (12). If LBB determined that any loan
 14 application contained falsified or fraudulent information that materially or adversely
 15 affected the value of a loan, the Seller’s Guide obligated Loan Network to either
 16 (1) repurchase the loan from LBB within thirty days of a written demand; or
 17 (2) indemnify LBB if LBB had already sold the loan. Id. at Ex. 1-B, § 710. The
 18 Seller’s Guide also provided LBB with repurchase or indemnification remedies in the
 19 event of an early payment default¹ by the borrower on the loan. Id.
 20

22 ¹ The Seller’s Guide defines an early payment default as the failure by the borrower, on any loan that was

01 **B. The Alba Loan**

02 On May 5, 2007, Cynthia Alba telephoned Loan Network and spoke with a
 03 mortgage broker about obtaining a home loan. *Id.* at Ex. 1-C. Alba told Loan
 04 Network that her monthly income was roughly \$6,000.00. Mot., Ex. 2 (Alba Dep.) at
 05 10, docket no. 33. During the call, the mortgage broker filled out a loan application for
 06 Alba that indicated she had a monthly income of \$15,000.00. *Id.* See also Mot., Ex. 1
 07 (Trumpp Decl.) at Ex. 1-C, docket no. 33. The same day, Loan Network approved
 08 Alba's loan application and the parties executed a promissory note for a loan of
 09 \$303,877.00 (the "Alba Loan"). *Id.* at Ex. 1-D. Loan Network sold the Alba Loan to
 10 LBB on June 28, 2007. *Id.* at ¶ 6; Ex. 1-F. LBB assigned the Alba Loan to LBHI,
 11 including all of LBB's rights under the Agreement and the Seller's Guide. *Id.* at ¶ 4;
 12 Ex. 1-E.

14 Alba's first payment was due on August 1, 2007. *Id.* at Ex. 1-F. Alba did not
 15 make the first payment on the Alba Loan until September 25, 2007. *Id.* at Ex. 1-G. On
 16 September 19, 2007, pursuant to the terms of the Seller's Guide, LBB² sent an early
 17 payment default notice to Loan Network, and demanded that Loan Network repurchase
 18 the loan. *Id.* at Ex. 1-H. Loan Network did not repurchase the Alba Loan within thirty
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20 prior-approved by LBB, to make the first monthly payment on the loan within thirty days of the first payment due
 21 date. *Id.* at Ex. 1-B, § 715.

22 ² LBB's authorized agent, Aurora Loan Services, L.L.C., prepared and delivered the notice. *Id.* at ¶¶ 5-6; Ex.
 1-H.

01 days. *Id.* at ¶ 11.

02 On April 1, 2008, LBHI sold the Alba Loan to the Structured Asset Securities
 03 Corporation (“SASCO”) for \$142,187.53. *Id.* at Exs. 1-I, 1-J. Including accrued
 04 unpaid interest, the sale resulted in a loss of \$163,540.20.³

05 **II. Discussion**

06 **A. Summary Judgment Standard**

07 Summary judgment shall be granted if no genuine issue of material fact exists
 08 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
 09 The moving party bears the initial burden of demonstrating the absence of a genuine
 10 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When a
 11 properly supported motion for summary judgment has been presented, the adverse party
 12 “may not rest upon the mere allegations or denials” of its pleadings. Fed. R. Civ. P.
 13 56(e). The non-moving party must set forth “specific facts” demonstrating the
 14 existence of a genuine issue for trial. *Id.*; *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
 15 242, 256 (1986).

16 **B. Choice of Law**

17 Both the Agreement and the Seller’s Guide contain choice-of-law provisions that
 18 provide for the application of New York law. Mot., Ex. 1 (Trumpp Decl.) at Ex. 1-A,
 19 § 8; Ex. 1-B § 713. To determine what law applies, the Court applies Washington’s
 20
 21

22 ³ A complete calculation of the repurchase price is set forth in the materials filed by LBHI. See *id.* at ¶¶ 13-21;
 Ex. 1-K.

01 choice of law rules. Arno v. Club Med Boutique, Inc., 134 F.3d 1424, 1425 (9th Cir.
 02 1998) (in a diversity action, federal court must apply choice of law rules of the forum
 03 state). Under Washington's choice of law rules in contract cases, courts generally
 04 apply the law of the forum selected by the parties in their contract. See Erwin v. Cotter
 05 Health Ctrs., 161 Wn.2d 676, 167 P.3d 1112 (2007).⁴ Therefore, New York law
 06 applies to this dispute.

07 **B. Breach of Contract Claim**

08 To establish a breach of contract under New York law, a party must show (1) the
 09 existence of a contract; (2) performance of the contract by the plaintiff; (3) breach by the
 10 defendant; and (4) damages resulting from the breach. Marks v. New York Univ., 61
 11 F. Supp. 2d 81, 88 (S.D.N.Y. 1999). Here, the record reflects that the parties entered
 12 into a valid contract, pursuant to which LBHI (through its predecessor-in-interest)
 13 purchased the Alba Loan. Mot., Ex. 1 (Trumpp Decl.), Exs. 1-A, 1-B, 1-F. The
 14 Agreement required Loan Network to repurchase the Alba Loan upon demand in the
 15 event of an early payment default or the discovery of any misrepresentations in the loan
 16 application documents. Id. at Exs. 1-A, 1-B. Nonetheless, although the Alba Loan
 17 application materials contained misrepresentations about Cynthia Alba's income, and
 18

20 ⁴ Washington recognizes two exceptions to the general rule that contractual choice of law provisions are
 21 enforceable. The contractually chosen law will not apply where (1) the chosen state has no substantial
 22 relationship to the parties or the transaction and there is no reasonable basis for the parties' choice; or
 (2) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a
 materially greater interest than the chosen state in the determination of a particular issue and which would be the
 state of the applicable law in the absence of an effective choice of law by the parties. Erwin, 161 Wn.2d at 694
 (citing Restatement (Second) of Conflict of Laws, § 187 (1971)). Neither exception applies in the present case.

01 the Alba Loan experienced an early payment default, Loan Network failed to repurchase
 02 the loan upon timely demand by LBHI, in breach of the Agreement. *Id.* at ¶ 11.
 03 Although LBHI took steps to mitigate its losses by selling the Alba Loan, it nonetheless
 04 incurred a loss of \$163,540.20. See id. at ¶¶ 13-21; Ex. 1-K. Accordingly, the Court
 05 finds that there is no genuine issue of material fact in dispute for trial, and GRANTS
 06 LBHI's motion for summary judgment, docket no. 33, on its breach of contract claim.
 07

As the prevailing party on a breach of contract claim, under New York law,
 LBHI is also entitled to prejudgment interest at the statutory rate of nine (9) percent per
 annum. N.Y. C.D.L.R. 5001, 5002, 5004. Prejudgment interest at a rate of nine
 percent per annum from the date of breach on October 19, 2007,⁵ through the date when
 LBHI's sale of the Alba Loan to SASCO closed on May 31, 2008, a total of 225 days,
 amounts to \$16,961.61. See Mot., Ex. 1 (Trumpp Decl.) ¶¶ 15-22; Ex. 1-K.
 Thereafter, in the 885 days between liquidation of the Alba Loan and the Court's entry
 of final judgment on November 3, 2010, LBHI accrued additional interest on the
 remaining balance of the loan in the amount of \$35,687.61. LBHI is entitled to a total
 award of prejudgment interest in the amount of \$52,649.22.

18 C. Attorneys' Fees

State law establishes the required showing for attorneys' fees in an action in
 diversity. Winterrowd v. Am. Gen. Annuity Ins. Co., 556 F.3d 815, 827 (9th Cir.
 21

22⁵ October 19, 2007 is thirty days after LBHI first sent Loan Network the written demand to repurchase the Alba
 Loan. See Mot., Ex. 1 (Trumpp Decl.) at Ex. 1-B § 710, docket no. 33, (requiring repurchase within thirty days of
 demand).

01 2009). Under New York law, a prevailing party in a breach of contract case is entitled
 02 to recover its attorneys' fees if the contract provides for an award of fees. Granada
 03 Condo. I v. Morris, 639 N.Y.S.2d 91, 93, 225 A.D.2d 520 (N.Y. App. Div. 1996).
 04 Here, the Agreement provides for an award of attorneys' fees to LBHI as the prevailing
 05 party in any litigation to enforce Loan Network's obligations under the Agreement.
 06 Mot., Ex. 1 (Trumpp Decl.) at Ex. 1-B, § 711, docket no. 33.

07 But the Court may only enforce an award of attorneys' fees pursuant to a
 08 contractual provision if the amount of fees claimed is reasonable and warranted for the
 09 services actually rendered. See Yonkers Rib House, Inc. v. 1789 Cent. Park Corp., 880
 10 N.Y.S.2d 148, 149, 63 A.D.3d 726 (N.Y. App. Div. 2009).

12 New York courts apply the traditional lodestar methodology to calculate a
 13 reasonable attorney fee award. See generally McIntyre v. Manhattan Ford,
 14 Lincoln-Mercury, Inc., 672 N.Y.S.2d 230, 176 Misc.2d 325 (N.Y. Sup. Ct. 1997)
 15 (complete discussion of New York law on the calculation of reasonable attorneys' fees).
 16 Under the lodestar methodology, the Court must first set a presumptive lodestar figure
 17 by multiplying the hours reasonably expended in the litigation by the reasonable hourly
 18 rate. Id. at 232. An award of fees is only appropriate if the attorney for the prevailing
 19 party submits a sufficient affidavit of services. See Bankers Fed. Sav. Bank FSB v. Off
 20 W. Broadway Developers, 638 N.Y.S.2d 72, 224 A.D.2d 376 (N.Y. App. Div. 1996).

01 Although LBHI submitted invoices identifying nine individuals who billed time
02 on this matter, see Mot., Ex. 3 (Mowrey Decl.) at Ex. 3-A, docket no. 33, LBHI only
03 provided a description of attorney Robert T. Mowrey's qualifications. See id. at
04 ¶¶ 5-12. Because Mr. Mowrey's declaration does not describe the qualifications of the
05 other individuals identified in the invoices, the Court cannot determine the
06 reasonableness of their rates for purposes of calculating a lodestar figure.
07

08 Moreover, even if the Court could determine the reasonableness of the other
09 attorneys' hourly rates, the plaintiff's current submissions are so heavily redacted that
10 the Court could not possibly determine whether the time billed to this matter by
11 plaintiff's counsel is reasonably related to the case. See id. at Ex. 3-A. Although the
12 Court recognizes that select portions of time entries must be redacted to preserve
13 privilege (such as a time entry describing the contents of a letter or telephone call with a
14 client), the plaintiff must provide a sufficient description of the specific tasks performed
15 in connection with the case for the Court to determine whether the amount of time spent
16 on the case is reasonable.

17 LBHI has failed to submit sufficient evidence of its counsels' experience and
18 qualifications and the reasonableness of their rates as compared with those charged in
19 the relevant legal community. LBHI also has not adequately described the time spent
20 by its attorneys on this litigation. Accordingly, the Court DENIES without prejudice
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22

01 LBHI's request for attorneys' fees. LBHI may file a post-judgment motion for
02 attorneys' fees with adequate supporting documentation.

03 **D. Costs**

04 In this district, Local Rules require the prevailing party to file a separate motion
05 to recover taxable costs, to be decided by the Clerk of the Court. See Local Rule CR
06 54(d)(1). If a party fails to file a motion for costs, all costs, other than statutory costs,
07 are deemed waived. Id. To the extent LBHI has moved for an award of costs, the
08 Court construes LBHI's request as a motion under Local Rule CR 54(d), and REFERS
09 the motion to the Clerk of the Court.
10

11 **III. Conclusion**

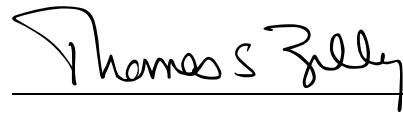
12 The Court GRANTS in part and DENIES in part LBHI's motion for summary
13 judgment, docket no. 33. LBHI is entitled to final judgment against Loan Network in
14 the amount of \$163,540.20 for Loan Network's breach of contract. LBHI is further
15 entitled to prejudgment interest in the amount of \$52,649.22. The judgment shall bear
16 interest at the statutory rate of nine (9) percent per annum. N.Y. C.D.L.R. 5004.

17 The Court DENIES without prejudice LBHI's motion for attorneys' fees, and
18 REFERS LBHI's motion for costs to the Clerk pursuant to Local Rule CR 54(d)(1).

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01 IT IS SO ORDERED.

02 DATED this 3rd day of November, 2010.

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05 Thomas S. Zilly
06 United States District Judge